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**UNITED STATES DISTRICT COURT
IN THE DISTRICT OF CENTRAL CALIFORNIA**

AIMEE AQUITANIA,

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

Case No. 2:18-cv-9215

**COMPLAINT AND DEMAND FOR
JURY TRIAL FOR VIOLATIONS
OF:**

1. Telephone Consumer Protection Act,
47 U.S.C. § 227 *et seq.*;
2. CAL. CIV. CODE § 1788 *et seq.*; and
3. Intrusion Upon Seclusion

COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, Aimee Aquitania (“Plaintiff”), by and through her attorneys, alleges the following against Defendant Bank of America N.A. (“Defendant”):

INTRODUCTION

1. Count I of Plaintiff’s Complaint is based upon the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227. The TCPA is a federal statute that broadly regulates the use of automated telephone equipment. Among other things, the TCPA prohibits certain unsolicited phone calls or phone calls without the

1 consent of the called party, restricts the use of automatic dialers or prerecorded
2 messages, and delegates rulemaking authority to the Federal Communications
3 Commission (“FCC”).

4 2. Count II of Plaintiff’s Complaint is based upon Rosenthal Fair Debt
5 Collection Practices Act (“RFDCPA”), CAL. CIV. CODE § 1788 *et seq.*, which
6 prohibits debt collectors from engaging in abusive, deceptive and unfair practices in
7 connection with the collection of consumer debts.

8 3. Count III of Plaintiff’s Complaint is based upon the Invasion of Privacy -
9 Intrusion upon Seclusion, as derived from § 652B of the Restatement (Second) of
10 Torts. § 652B prohibits an intentional intrusion, “physically or otherwise, upon the
11 solitude or seclusion of another or his private affairs or concerns... that would be
12 highly offensive to a reasonable person.”

13 **JURISDICTION AND VENUE**

14 4. Jurisdiction of this court arises under 47 U.S.C. § 227 *et seq.* and 28 U.S.C.
15 § 1331.

16 5. Venue is proper pursuant to 28 U.S.C. § 1391(b)(3) in that Defendant
17 transacts business here and therefore personal jurisdiction is also established.

18 **PARTIES**

19 6. Plaintiff is a natural person and a resident in the State of California.

20 7. Defendant is a financial institution with its principal place of business located
21 at 100 North Tryon Street, Suite 170, Charlotte, North Carolina 28255.

22 8. Defendant is an entity which, in the ordinary course of business, regularly, on
23 behalf of itself, engages in debt collection. Thus, Defendant is a “debt collector” as
24 defined by the RFDCPA, CAL. CIV. CODE § 1788.2(c).

25 9. Defendant acted through its agents, employees, officers, members, directors,
26 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives,
27 and insurers.

28 **FACTUAL ALLEGATIONS**

1 10. In or around June 2018, in an attempt to collect on an alleged consumer
2 account, Defendant began calling Plaintiff on her cellular phone number ending in
3 6066.

4 11. Defendant called from the at least the following phone numbers: (800) 536-
5 1584, (888) 645-6262, and (916) 605-5054.

6 12. Upon information and belief, Defendant owns and operates the phone
7 numbers.

8 13. On or about June 5, 2018, at 1:59 p.m., Plaintiff received a call on her cell
9 phone from (800) 536-1584. During this eighteen (18) minute conversation, Plaintiff
10 spoke with a representative named John Kestler; at which point Plaintiff
11 unequivocally revoked consent to be contacted any further.

12 14. Despite revoking consent Plaintiff continued to receive phone calls from
13 Defendant.

14 15. Between June 5, 2018 and June 28, 2018, Defendant willfully called Plaintiff
15 on her cellular phone approximately thirty (30) times to annoy and harass Plaintiff
16 in the hopes that it could induce Plaintiff to pay the debt.

17 16. Upon information and belief, each time Plaintiff received a phone call from
18 Defendant there was a brief pause prior to speaking with a representative, indicating
19 the use of an automatic telephone dialing system.

20 17. Defendant called Plaintiff up to three (3) times a day, further indicating the
21 use of an automatic telephone dialing system.

22 18. For example, on June 25, 2018, Defendant called at 9:16 a.m., 2:03 p.m., and
23 5:05 p.m.

24 19. On many occasions, Defendant also left prerecorded or artificial voice
25 messages for Plaintiff without her consent.

26 20. Plaintiff is currently employed as a nurse and works night shifts.

27 21. The majority of the calls that Plaintiff received were during the times when
28 Plaintiff was sleeping.

1 22. Plaintiff would often be disturbed and awoken due to the calls by Defendant.

2 23. Due to Defendant's actions, Plaintiff has suffered emotional distress,
3 interrupted sleep, and invasion of her privacy.

4 **COUNT I**

5 **(Violations of the TCPA, 47 U.S.C. § 227)**

6 24. Plaintiff incorporates by reference paragraphs one (1) through twenty-three
7 (23) of this Complaint as though fully stated herein.

8 25. Defendant violated the TCPA. Defendant's violations include, but are not
9 limited to the following:

10 a. Within four years prior to the filing of this action, on multiple
11 occasions, Defendant violated TCPA 47 U.S.C. § 227 (b)(1)(A)(iii) which
12 states in pertinent part, "It shall be unlawful for any person within the United
13 States . . . to make any call (other than a call made for emergency purposes or
14 made with the prior express consent of the called party) using any automatic
15 telephone dialing system or an artificial or prerecorded voice — to any
16 telephone number assigned to a . . . cellular telephone service . . . or any
17 service for which the called party is charged for the call.

18 b. Within four years prior to the filing of this action, on multiple
19 occasions, Defendant willfully and/or knowingly contacted Plaintiff using an
20 artificial prerecorded voice or an automatic telephone dialing system and as
21 such, Defendant knowing and/or willfully violated the TCPA.

22 26. As a result of Defendant's violations of 47 U.S.C. § 227, Plaintiff is entitled
23 to an award of five hundred dollars (\$500.00) in statutory damages, for each and
24 every violation, pursuant to 47 U.S.C. § 227(b)(3)(B). If the Court finds that
25 Defendant knowingly and/or willfully violated the TCPA, Plaintiff is entitled to an
26 award of one thousand five hundred dollars (\$1,500.00), for each and every violation
27 pursuant to 47 U.S.C. § 227(b)(3).

28 **COUNT II**

(Violations of CAL. CIV. CODE § 1788 *et seq.*)

27. Plaintiff incorporates by reference paragraphs one (1) through twenty-six (26) of this Complaint as though fully stated herein.

28. Defendant violated the RFDCPA. Defendant's violations include, but are not limited to, the following:

a. Defendant violated CAL. CIV. CODE § 1788.11(d) by causing a telephone to ring repeatedly or continuously to annoy the person called;

b. Defendant violated CAL. CIV. CODE § 1788.17 by collecting or attempting to collect a consumer debt without complying with the provisions of Sections 1692b to 1692j, inclusive, of . . . Title 15 of the United States Code (Fair Debt Collection Practices Act).

i. Defendant violated CAL. CIV. CODE § 1788.17 by violating 15 U.S.C. § 1692d by engaging in conduct, the natural consequence of which is to harass, oppress or abuse any person in connection with the collection of the alleged debt; and

ii. Defendant violated CAL. CIV. CODE § 1788.17 by violating 15 U.S.C. § 1692d(5) by causing Plaintiff's phone to ring or engaging Plaintiff in telephone conversations repeatedly; and

iii. Defendant violated CAL. CIV. CODE § 1788.17 by violating 15 U.S.C. § 1692f by using unfair or unconscionable means in connection with the collection of an alleged debt.

29. Defendant's acts, as described above, were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt.

30. As a result of the foregoing violations of the RFDCPA, Defendant is liable to Plaintiff for actual damages, statutory damages, and attorneys' fees and costs.

31. Plaintiff is informed and believes such acts directed towards Plaintiff were carried out with a conscious disregard of Plaintiff's right to be free from such behavior, such as to constitute oppression, fraud or malice pursuant to CAL. CIV.

1 CODE § 3294, entitling Plaintiff to punitive damages in the amount appropriate to
2 punish and set an example of Defendant.

3 **COUNT III**

4 **(Intrusion Upon Seclusion)**

5 32. Plaintiff incorporates by reference paragraphs one (1) through thirty-one (31)
6 of this Complaint as though fully stated herein.

7 33. Restatement of the Law, Second, Torts, § 652(b) defines intrusion upon
8 seclusion as, “One who intentionally intrudes... upon the solitude or seclusion of
9 another, or his private affairs or concerns, is subject to liability to the other for
10 invasion of privacy, if the intrusion would be highly offensive to a reasonable
11 person.”

12 34. Defendant violated Plaintiff’s privacy. Defendant’s violations include, but are
13 not limited to, the following:

14 a. Defendant intentionally intruded, physically or otherwise, upon
15 Plaintiff’s solitude and seclusion by engaging in harassing phone calls in an
16 attempt to collect on an alleged debt despite numerous requests for the calls
17 to cease.

18 b. The number and frequency of the telephone calls to Plaintiff by
19 Defendant after several requests for the calls to cease constitute an intrusion
20 on Plaintiff’s privacy and solitude.

21 c. Defendant’s conduct would be highly offensive to a reasonable person
22 as Plaintiff received calls that often interrupted Plaintiff’s work and sleep
23 schedule.

24 d. Defendant’s acts, as described above, were done intentionally with the
25 purpose of coercing Plaintiff to pay the alleged debt.

26 35. As a result of Defendant’s violations of Plaintiff’s privacy, Defendant is liable
27 to Plaintiff for actual damages.
28

1 36. Plaintiff is informed and believes such acts directed towards Plaintiff were
2 carried out with a conscious disregard of Plaintiff's right to be free from such
3 behavior, such as to constitute oppression, fraud or malice pursuant to CAL. CIV.
4 CODE § 3294, entitling Plaintiff to punitive damages in the amount appropriate to
5 punish and set an example of Defendant.

6 **PRAYER OF RELIEF**

7 **WHEREFORE**, Plaintiff Aimee Aquitania, respectfully requests judgment
8 be entered against Defendant Bank of America, N.A. for the following:

9 37. Statutory damages of \$500.00 for each and every negligent violation of the
10 TCPA pursuant to 47 U.S.C. § 227 (b)(3)(B);

11 38. Statutory damages of \$1500.00 for each and every knowing and/or willful
12 violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3);

13 39. Statutory damages of \$1,000.00 pursuant to the RFDCPA, CAL. CIV. CODE
14 §1788.30(b);

15 40. Actual damages pursuant to RFDCPA, CAL. CIV. CODE §1788.30(b);

16 41. Costs and reasonable attorneys' fees pursuant to the RFDCPA, CAL. CIV.
17 CODE §1788.30(c);

18 42. Punitive damages pursuant to CAL. CIV. CODE § 3294.

19 43. Awarding Plaintiff any pre-judgment and post-judgment interest as may be
20 allowed under the law; and

21 44. Any other relief that this Honorable Court deems appropriate.

22 Respectfully submitted this 26th day of October 2018.

23
24 **PRICE LAW GROUP, APC**

25
26 By: /s/ Brian Brazier
27 Brian Brazier, Esq. (SBN: 245004)
28 *Attorneys for Plaintiff,*
Aimee Aquitania